

**MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
REGULAR MEETING
APRIL 24, 2006**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, April 24, 2006 in the City Council Chamber of the Melvin Municipal Office Building, commencing at 2:09 p.m. The following were present: Chair Hugh Holston, Ann Buffington, John Cross, Jim Kee, Russ Parmele, Rick Pinto (arrived at 4:25 p.m.) and Michael Schiftan. Bill Ruska, Zoning Administrator, and Terry Wood, Esq., Deputy City Attorney, were also present.

Chair Holston called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the manner in which the Board conducts its hearings and the method of appealing any ruling made by the Board. Chair Holston also advised that each side, regardless of the number of speakers would be allowed a total of 20 minutes to present evidence.

APPROVAL OF MINUTES OF LAST MEETING

Mr. Parmele moved approval of the minutes of the March 27, 2006 meeting as written, seconded by Mr. Cross. The Board voted unanimously 6-0 in favor of the motion. (Ayes: Holston, Buffington, Cross, Kee, Parmele, Schiftan. Nays: None.)

Mr. Ruska was sworn or affirmed as to all testimony given by him at this meeting.

CHANGES IN AGENDA

Mr. Ruska said there had been a request for the continuance of BOA-06-06, 310 West Meadowview Road.

Marc Isaacson, Esq., 101 West Friendly Avenue, said this matter had been on the agenda twice at the January and February meetings. It is a complex matter and two months ago, the Board heard a request for a variance simply to reduce the number of required parking spaces. That variance received a 3-2 vote and it was not granted. He talked with the owner today and he and the adjoining property owner have reached an agreement in principle to "borrow" those parking spaces. However, they have not been able to reduce that to writing. He requested a continuance until the May meeting.

There was no opposition to the request for continuance.

Ms. Buffington moved that BOA-06-06, 310 West Meadowview Road, be continued until the Board's next meeting, seconded by Mr. Cross. The Board voted 5-0-1 in favor of the motion. (Ayes: Holston, Buffington, Kee, Parmele, Schiftan. Nays: None. Abstain: Cross.)

OLD BUSINESS

VARIANCE

- (A) BOA-06-06: 310 WEST MEADOWVIEW ROAD- HERITAGE HOUSE 310, LLC REQUESTS VARIANCES FROM THE PARKING REQUIREMENT THAT PARKING SPACES FOR A BAR MAY NOT BE LOCATED OFF-SITE AND FROM THE REQUIREMENT THAT**

REQUIRED PARKING FOR A BAR MAY NOT BE LOCATED ACROSS AN INTERVENING MINOR THOROUGHFARE. THIS CASE WAS CONTINUED FROM THE JANUARY 23, AND FEBRUARY 27, 2006 MEETINGS. VIOLATION #1: THE APPLICANT IS REQUESTING TO LOCATE REQUIRED PARKING SPACES FOR A PROPOSED BAR OFF-SITE FROM THE ZONED LOT. TABLE 30-5-3-1. VIOLATION #2: THE APPLICANT IS REQUESTING TO LOCATE REQUIRED PARKING ACROSS WEST MEADOWVIEW ROAD, A MINOR THOROUGHFARE. SECTION 30-5-3.5(A). PRESENT ZONING-CD-PDI, BS-40, CROSS STREET-VILLAGE GREEN DRIVE. (CONTINUED)

This matter was continued at the beginning of the meeting.

(B) BOA-06-13: 600 ELMWOOD DRIVE - JEFFREY AND LISA HILL REQUEST A VARIANCE FOR A PROPOSED KITCHEN ADDITION THAT ENCROACHES INTO THE MINIMUM BUILDING SEPARATION REQUIREMENT. VIOLATION: THE PROPOSED ADDITION WILL BE BUILT 0.9 FEET FROM THE EXISTING DETACHED CARPORT INSTEAD OF 5 FEET AS REQUIRED. THIS CASE WAS CONTINUED FROM THE FEBRUARY 27, AND MARCH 27, 2006 MEETINGS. (SECTION 30-4-8.2(B)(1), PRESENT ZONING-RS-12, BS-53 CROSS STREET-ROCKFORD ROAD. (GRANTED WITH CONDITION)

Mr. Cross said this is one of the two cases in which he requests to be recused (BOA-06-13 and BOA-06-15) since Mr. Allen was a partner in his law firm.

Mr. Parmele moved that Mr. Cross be recused from consideration or voting in the matters of BOA-06-13 and BOA-06-15, seconded by Mr. Kee. The Board voted 5-0-1 in favor of the motion. (Ayes: Holston, Buffington, Kee, Parmele, Schifftan. Nays: None. Abstain: Cross.)

Mr. Ruska said Jeffrey and Lisa Hill are the owners of a parcel located at 600 Elmwood Drive. This case was continued from the February 27 and March 27, 2006 meetings. The property is located on the eastern side of Elmwood Drive south of Rockford Road on zoning map block sheet 53. The lot is currently zoned RS-12. The applicant is proposing to construct a kitchen addition to the existing dwelling. The addition will encroach 4.1 feet into the minimum building separation requirement. The proposed addition will be 0.9 feet from an existing detached carport. The applicant has stated that the house was built in the 1950's. The carport existed when the Hills purchased the property. The applicant did not submit a survey, so the carport dimensions and setbacks are unknown to the zoning office. The adjacent properties are also zoned RS-12.

Mr. Holston opened the public hearing.

Derek Allen, Esq., 230 North Elm Street, previously sworn or affirmed, represented Jeffrey and Lisa Hill in this request for a variance. He handed up documents for the Board's information. He went through these documents, which explained the rationale for requesting this variance and the reasons why the Board should grant the variance.

Mr. Allen and Mr. Ruska answered questions from Board members.

There was no opposition to this request. Chair Holston closed the public hearing.

Ms. Buffington said based on the stated findings of fact in BOA-06-13, 600 Elmwood Drive, she moved that the Zoning Enforcement Officer be overruled and the variance be granted based on the

following: If the applicant complies with the provisions of this ordinance, he can make no reasonable of his property because it would preclude a building that would modernize the house that was built maybe 60 years ago; if we deny this variance we are holding back the look of the community; the hardship of which the applicant complains results from the unique circumstances to the property for the said reasoning and is a lot older; the hardship results from the application of this ordinance to the property because this whole structure was built before we had these zoning laws; and the variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit because it was pointed out that the law helps us to protect the aesthetics and safety of a neighborhood and this will do both; it will not change the look from the front. The variance is granted subject to the provision that the carport not be enclosed so that all safety will be there. The granting of the variance assures the public safety and welfare and does substantial justice for the same reasons. Mr. Parmele seconded the motion. The Board voted 5-0-1 in favor of the motion. (Ayes: Holston, Buffington, Kee, Parmele, Schiffan. Nays: None. Abstain: Cross.)

Chair Holston said he had been remiss in introducing the new Board member, Michael Schiffan. He welcomed Mr. Schiffan.

INTERPRETATION

(A) BOA-06-15: 1605 NEW GARDEN ROAD - KRUSCH PROPERTIES, LLC REQUESTS AN INTERPRETATION OF A ZONING CONDITION WHICH PROHIBITS "FAST FOOD DRIVE THROUGHS." IT IS THEIR CONTENTION THAT COFFEE SHOPS WITH DRIVE THROUGH SERVICE ARE NOT INCLUDED IN THIS USE. THIS CASE WAS CONTINUED FROM THE FEBRUARY 27, AND MARCH 27, 2006 MEETINGS. CONDITIONAL DISTRICT SHOPPING CENTER #2601, TABLE 30-4-5-1, CD-SC, 121, CROSS STREET-HORSEPEN CREEK ROAD. (DENIED)

Chair Holston said Ms. Buffington had requested recusal in this matter due to a conflict of interest.

Mr. Schiffan moved that Ms. Buffington be recused from all discussion and voting on this item, seconded by Mr. Parmele. The Board voted 4-0-2 in favor of the motion. (Ayes: Holston, Kee, Parmele, Schiffan. Nays: None. Abstain: Buffington, Cross.)

Mr. Ruska stated that Krusch Properties, LLC is the owner of the property located at 1605 New Garden Road that contains Garden Creek Shopping Center. This case was continued from the February 27, and March 27, 2006 meetings. The property is located at the northeastern intersection of New Garden Road and Horsepen Creek Road on zoning map block sheet 121. The lot is currently zoned CD-SC (Conditional District-Shopping Center #2601). Condition #1 states: "All uses in Shopping Center District except the following: night club; sexually oriented businesses (30-2-2.7); auto repair center or dealership; carwash; boat sales; manufactured home sales; building supply stores; **fast-food drive throughs.**" The applicant is requesting an interpretation of the zoning condition that prohibits "fast food drive throughs." It is their contention that coffee shops with drive through services are not included in this use. The adjacent properties located to the north and east are zoned RS-12. New Garden Road and Bryan Boulevard are located to the south of this property, and the properties located on the western side of Horsepen Creek Road are zoned CD-RM-8 and RS-12.

Chair Holston opened the public hearing.

Derek Allen, Esq., 320 North Elm Street, previously sworn or affirmed, handed up documents for the Board's consideration. He then explained some the contents of those documents, which included existing conditional use rezoning items. Their interpretation was "fast-food drive throughs" did not apply to coffee shops with drive throughs. They asked that the Board find that their interpretation was correct. Under the SIC 5812, fast-food restaurants and coffee shops are both listed. However, the distinction is when the subsections are read. No food would be cooked on the premises. The food is trucked in and only heated when served.

Mr. Ruska explained that the question before the Board was an interpretation of the term "fast-foot drive throughs" as it relates to this one property and you are interpreting a zoning condition. Staff's interpretation was also the determination of the Legal Department.

Edward Krusch, 509 South Edgeworth Street, was sworn or affirmed. He described his work in the neighborhood prior to this property being rezoned with conditions. The neighbors did not want a fast-food restaurant, such as McDonalds, Wendy's, etc., in the shopping center. There were no coffee shops with drive throughs when this property was rezoned.

Mr. Ruska reminded the Board that the applicant offered the wording of the conditions at the time of rezoning. It is not something that the City dictates.

There was no one present to speak in opposition to the request. Chair Holston closed the public hearing.

A general discussion ensued among the four voting Board members.

Mr. Parmele said in the matter of BOA-06-15, 1506 New Garden Road, which asks for an interpretation of fast-food drive throughs, he moved that indeed, the serving of coffee and coffee products would constitute a fast-food drive through and that the interpretation of the Zoning Administrator be upheld. Mr. Schiffan seconded the motion. The Board voted 4-0-2 in favor of the motion. (Ayes: Holston, Kee, Parmele, Schiffan. Nays: None. Abstain: Buffington, Cross.)

NEW BUSINESS

VARIANCE

A) BOA-06-21: 3743 BATTLEGROUND AVENUE - SHURGARD/MORNINGSTAR SELF STORAGE DEVELOPMENT REQUESTS A VARIANCE FROM THE MAXIMUM SIGN HEIGHT REQUIREMENT. VIOLATION: A PROPOSED FREESTANDING SIGN WILL EXCEED THE MAXIMUM HEIGHT OF 6 FEET WITHIN 100 FEET OF RESIDENTIAL ZONING BY 19 FEET. TABLE 30-5-5-2-NOTE 3, PRESENT ZONING-CD-LI, BS-172, CROSS STREET-COTSWOLD AVENUE. (GRANTED WITH CONDITIONS)

Mr. Ruska said that Shurgard/Morningstar Self Storage Development, Inc is the owner of the property located at 3743 Battleground Avenue. The lot is located on the western side of US 220 North south of Cotswold Terrace on zoning map block sheet 172. The property is currently zoned CD-LI. Sign Ordinance Table 30-5-5-2 footnote #3 states: "Any sign 6 feet in height shall not be located within 100 feet of any residential district." The applicant is requesting to allow a freestanding identification sign to be 25 feet tall instead of 6 feet as required. The proposed sign will be located approximately 20 feet from the adjacent residential zoning. The applicant has stated the variance is needed due to topography, existing watershed issues, and stream buffer easement locations. The adjacent property

located to the south is currently zoned CD-RM-18 and contains Park Forest Apartments. The property located to the north is zoned CD-HB, the property located to the west is zoned CD-RM-18, and the properties located on the eastern side of US 220 North are zoned HB and CD-SC.

Chair Holston opened the public hearing.

Dave Bluestone, 10833 Monroe Road, Mathews, NC, was sworn or affirmed. He passed documents to the Board members for their consideration. He then explained the information contained in the documents and his reason for seeking this variance from the maximum sign height requirement.

April Clodfelter, 3102 Cameron Court, Trinity, NC, was sworn or affirmed. She said Water Resources told her that the area in question with the trees would not be developed because it is in the watershed area. She did not know who owned that property.

Mr. Ruska said new flood plain maps will be coming out soon and probably will include more flood plain property than what we currently have. He also said the Zoning Commission approved a condition in the Conditional Rezoning that allowed them to have up to a maximum 25-foot high sign, but there was nothing in that condition that guaranteed them achieving that height. The Zoning Commission never looked at the location of that sign.

There was no one to speak in opposition to the request. Chair Holston closed the public hearing.

The Board discussed generally the pros and cons of the sign, the fact that it was so near a flood plain and residential property, plus other concerns. They also discussed conditions that could be put on the signage.

Mr. Cross said in the matter of BOA-06-21, 3743 Battleground Avenue, he moved that the Zoning Administrator findings of fact be adopted and incorporated into the record by reference and he moved that the Zoning Enforcement Officer be overruled and that the variance granted on the condition that if the adjoining property to the south of the applicant's property is in any fashion further developed as residential that the variance would expire and be terminated and based on those facts and that condition, he justified the variance on the following: 1) There are practical difficulties or unnecessary hardships that result from carrying out of the strict letter of this ordinance; 2) If the applicant complies with the provisions of the ordinance, the applicant can make no reasonable use of his property because the property is zoned and in a commercial area so it is clearly going to be for a commercial enterprise that has limited frontage to the main thoroughfare of Battleground Avenue and, therefore, for it to receive any type of reference to the location that is significant in the commercial sense higher signage is reasonable and it would be unreasonable to expect a commercial enterprise that is not visible from the road due to the existing water drainage areas and other limitations on the property that have been discussed at this hearing, it would be unreasonable to expect a commercial enterprise to operate otherwise; 3) The hardship of which the applicant complains results from the unique circumstances related to the applicant's property because this particular property is riddled with flood plains and setback concerns and, in fact, they have located the only portion of the property to have this particular sign that is not, in fact, on the building and, to be quite honest, he was not even positive you could even have signage at all with the current ordinance that we are looking for with this variance that is of a 25-foot height and is consistent with the surrounding areas; 4) The hardship results from the application of this ordinance to the property because there is technically an adjoining residential lot, even though the adjoining residential lot is in the area, but then 200 feet from the signage is not being used as a residence; 5) The hardship is not the result of the applicant's own actions because clearly the applicant has not created the flood plains and is building his business on the existing part of the property that is available; 6) The variance is in harmony with the general

purpose and intent of this ordinance and preserves its spirit, particularly with the condition that stated since the closest adjoining actual residential development, which is an apartment complex, is 200 feet from the proposed signage; and 7) The granting of the variance assures the public safety and welfare and does substantial justice because the signage is consistent with other signage in the Battleground Avenue area and in particular the area in which this located and there are no safety concerns that result from the sign itself. Ms. Buffington seconded the motion. The Board voted unanimously 6-0 in favor of the motion. (Ayes: Holston, Buffington, Cross, Kee, Parmele, Schiffan. Nays: None.)

Chair Holston called for a five-minute break from 3:55 to 4:00 p.m.

B) BOA-06-22: 2804 EAST WENDOVER AVENUE - WAYNE PATRICK REQUESTS A VARIANCE FROM THE MINIMUM INTERIOR PROPERTY LINE SETBACK. VIOLATION: A PROPOSED MULTIFAMILY BUILDING WILL ENCROACH 2 FEET INTO A 20-FOOT INTERIOR SETBACK ON BOTH THE EASTERN AND WESTERN INTERIOR PROPERTY LINES. TABLE 30-4-6-4, PRESENT ZONING-RM-18, BS-32, CROSS STREET-HOLT AVENUE. (CONTINUED)

Mr. Ruska said that Wayne Patrick is the owner of a parcel located at 2804 East Wendover Avenue. The lot is located on the southern side of East Wendover Avenue east of Holt Avenue on zoning map block sheet 32 and is zoned RM-18. The applicant is requesting variances from the minimum interior property line setbacks. A proposed multifamily building will encroach 2 feet into a 20-foot interior setback on both the eastern and western interior lot lines. The applicant is proposing to construct one building that will contain four dwelling units. The applicant has submitted a site drawing. The western portion of the property decreases in width by approximately 12.88 feet. By meeting the required 100-foot centerline setback from East Wendover Avenue, the building is proposed to be constructed within the area of the lot that decreased in width. This is the portion of the building that will encroach on each side. The adjacent properties are also zoned RM-18.

Chair Holston opened the public hearing.

Wayne Patrick, 3001 Starmount Farms Drive, previously sworn or affirmed, explained that Mr. Hucklebee and he had designed four three-bedroom units for the subject property. A variance of 2 feet of a 20 foot setback is needed on the eastern and western interior property lines in order to site the units.

Dan Hucklebee, 410 Beverly Place, previously sworn or affirmed, said the structure could not be narrowed by one foot since that would make the third bedroom of each unit into a closet.

Mr. Hucklebee said he had a correction also. On the listing, the property is listed as 2804. However, the actual street address is 2806 East Wendover Avenue. They did not pick that up until they got here today.

Mr. Ruska confirmed that advertising and notification on this item contained the address of 2804 East Wendover Avenue.

Counsel Wood said if it would give the Board a better comfort level, the Board could continue it and staff will renotify those people so they can attend the next meeting if they wish.

Mr. Cross moved in BOA-06-22, 2804 East Wendover Avenue, that it be continued until the next meeting of the Board of Adjustment and that the appropriate clarifications to the record and

application be made by that time. Mr. Schiffan seconded the motion. The Board voted unanimously 6-0 in favor of the motion. (Ayes: Holston, Buffington, Cross, Kee, Parmele, Schiffan. Nays: None.)

Mr. Pinto arrived at 4:25 p.m. and participated in the balance of the meeting.

C) BOA-06-23: 5111 WEST MARKET STREET - WACO PARTNERSHIP REQUESTS VARIANCES FOR A PAINT STORE ADDITION WHICH WILL ENCROACH INTO THE MINIMUM INTERIOR SETBACKS. VIOLATION #1: A PROPOSED BUILDING ADDITION WILL ENCROACH 5 FEET INTO A 10-FOOT INTERIOR SETBACK ADJACENT TO THE EASTERN LOT LINE. TABLE 30-4-6-5. VIOLATION #2: THE SAME ADDITION WILL ENCROACH 8 FEET INTO A 10-FOOT INTERIOR SETBACK ADJACENT TO THE SOUTHERN LOT LINE. TABLE 30-4-6-5. PRESENT ZONING-HB, BS-116, CROSS STREET-SOUTH WALNUT CIRCLE. (GRANTED)

Mr. Ruska stated that WACO Partnership is the owner of a parcel located at 5111 West Market Street. The lot is located at the southeastern intersection of West Market Street and South Walnut Circle on zoning map block sheet 116. The property contains the Duron Paint Store and is zoned HB. The applicant is requesting two dimensional variances for an attached addition. The addition will encroach 5 feet into a 10-foot interior setback adjacent to the eastern lot line and it will encroach 2 feet into a 10-foot interior setback adjacent to the southern lot line. (This case was advertised that the addition would encroach 8 feet adjacent to the southern lot line, while in fact it will be 8 feet from this lot line. The encroachment is 2 feet instead of 8 feet that is less than was advertised). Tax records indicate the building was constructed in 1974. The 5 foot encroachment that is requested along the eastern (interior side) lot line will be line with the existing building. The southern (rear) lot line is angled. The sharpest portion of the angle is the location for the proposed addition. The nearest corner of the addition will be eight feet from the lot line. The rest of the addition will meet the 10 foot required setback. The addition is proposed to be 40 feet by 34 feet for a total of 1,360 square feet. The adjacent property located to the east is zoned HB, the adjacent property located to the south is zoned LI and the property located to the west of South Walnut Circle is zoned CD-GB.

Chair Holston opened the public hearing.

Pat Adams, 103 Battle Road, with offices at 201 West Market Street, previously sworn or affirmed, said this building was built in 1974 and met the ordinance requirements at that time. Duron Paint, the tenant since 1988, approached them and asked them to extend the building to the rear so they would have additional space. This is the reason for the request for variances.

The Board members asked questions of Mr. Adams, which he answered.

There was no one to speak in opposition to the request. Chair Holston closed the public hearing.

A general discussion ensued among the Board members.

Mr. Ruska advised that the Board could vote separately on the two requests, potentially granting one and denying the other.

The Board members continued their discussion, giving their ideas of the pros and cons of the requests.

Chair Holston briefly reopened the public hearing in order to have Mr. Adams answer more questions from the Board members. After the questions were answered, Chair Holston again closed the public hearing.

Counsel Wood advised the Board that if they thought their vote would be any different, if you are going to vote differently because of the 5-foot setback or the 2-foot encroachment, you should separate the vote on these two variances.

Ms. Buffington said based on the findings of fact in the case of BOA-06-23, (Violation No. 2), she moved that these two issues be voted on separately and she was asking to vote on the issue that the addition will encroach 2-feet into a 10-foot interior setback to the adjacent southern lot line. She moved that the Zoning Enforcement Officer be overruled and that the variance be granted. She thought there were practical difficulties or unnecessary that result from carrying out the strict letter of this ordinance. If the applicant complies with the provisions of this ordinance, he or she can make no reasonable use of this property because it is just going to be a jut in the wall. The hardship of which the applicant complains results from the unique circumstances related to the applicant's property. The hardship results from the application of this ordinance to the property because he has a building that is in the use of a good and successful business and they would like to expand as much as possible in order to remain there. The 2-feet does make a difference. The hardship is not the result of the applicant's own actions because he did not draw the lot lines and he did not make the zoning and it is not his fault that the business there wishes to expand. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because she did not think anybody would be able to tell that it encroached or did anything wrong, especially considering the area. And the granting of the variance assures the public safety and welfare and does substantial justice because it does not do anything to cause any kind of damage or safety issues or injustice to its neighbors. Mr. Parmele seconded the motion. The Board voted 4-3 in favor of the motion. (Ayes: Buffington, Kee, Parmele, Schiftan. Nays: Holston, Cross, Pinto.)

Ms. Buffington said based on the stated findings of fact in the case of BOA-06-23, (Violation No. 2) which will become a part of this record, she moved that the Zoning Enforcement Officer be overruled and that the variance be granted. There are practical difficulties or unnecessary hardships. If the applicant complies with the provisions of the ordinance then he or she can make no reasonable use of his property. Admittedly this is a hard one to defend, but the building already encroaches 5-feet into interior setback so we are just extending what is already there. The hardship of which the applicant complains results from the unique circumstances relating to the applicant's property because the building already encroaches 5-feet. The hardship results from the application of this ordinance to the property because he will not be able to expand the business that is requesting to grow and would possibly have to shut the business down. The hardship is not the result of the applicant's own actions because he is being asked to expand the building for a prosperous and growing business. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit because we are not making the building look any different or taking up any other land or it is just a natural extension. The granting of the variance assures the public safety and welfare and does substantial justice because it does not do anything to cause public safety issues or detrimental welfare in that area. Mr. Schiftan seconded the motion. The Board voted unanimously 7-0 in favor of the motion. (Ayes: Holston, Buffington, Cross, Kee, Parmele, Pinto, Schiftan. Nays: None.)

SPECIAL EXCEPTION

(A) BOA-06-24: 4 KINGS FOREST COURT - KOSEPHA PANUELO-SMITH REQUESTS A SPECIAL EXCEPTION AS AUTHORIZED BY SECTION 30-5-2.37(B) TO ALLOW A

SEPARATION OF 1,100 FEET FROM ONE FAMILY CARE HOME (6 OR LESS PERSONS) TO ANOTHER FAMILY CARE HOME (6 OR LESS PERSONS) WHEN 1,320 FEET IS REQUIRED. PRESENT ZONING-RS-9, BS-31, CROSS STREET-LORD FOXLEY DRIVE. (DENIED)

Mr. Ruska said Kosepha Panuelo-Smith is the owner of the property located at 4 Kings Forest Court. The lot is located on the north side of Kings Forest Court west of Lord Foxley Drive on zoning map block sheet 31. The property is zoned RS-9. The applicant is requesting a Special Exception as authorized by Section 30-5-2.37(B) to locate a proposed family care home (6 or less persons) 1,100 feet from an existing family care home (6 or less persons) instead of the required spacing of 1,320 feet. This location will not meet the spacing requirement by approximately 220 feet. This measurement is established from property line to property line. The existing family care home is located at 1514 Woodbriar Avenue, which is located north and west of the proposed family care home. The homes will be separated by collector streets and numerous other single family homes. Attached is a copy of an updated report for Board of Adjustment Special Exception requests for family care homes from January 2,000 through March 2006. The adjacent properties are also zoned RS-9.

Chair Holston opened the public hearing.

Ron Smith, 1850 Yeattes Mill Court, High Point, was previously sworn or affirmed. Mr. Ruska had explained the reasons for the request. The home that is closest to them based off of those zoning lines is actually a nursing-type home, but it runs a sporadic operation, but it renews its license every year. At the present time, it is not in operation. However, should they even decide to get a client, they could. His home would care for elderly women who were mentally impaired. Based on the size of the house, they would have three persons or less. His neighborhood is mainly elderly persons so the home's clientele would fit nicely into the existing neighborhood. His sister-in-law actually owns this property.

James Johnston, 1801 Lord Proctor Drive, was previously sworn or affirmed. He opposed this request because he did not know where they would put any clientele since the house was small and there were about seven persons living there already.

Eldridge Chambers, 1805 Lord Foxley Drive, was previously sworn or affirmed. He opposed this request because he could not figure out where they would put people in a house if there were six or seven people already living in the house. He did not know the house on Lord Foxley Drive that was a family care facility.

In rebuttal for the applicant, Mr. Smith said he would like to clarify the situation. Should the home be licensed as a home care facility, the current residents would no longer live there. The only issue here is the 220-feet of separation that they did not understand why because it does not apply to other houses.

Chair Holston said each matter is considered on its own merit and some may have been granted a Special Exception because of various mitigating factors.

Mr. Ruska said the spacing was based upon information from the City's GIS System.

Chair Holston closed the public hearing.

There was a discussion among the Board members and they gave their reasons for being in favor of or against the request.

Chair Holston reopened the public hearing.

Mr. Johnston, who had spoken in opposition to the request, said 4 Kings Forest Court was on the backside of his property.

Chair Holston closed the public hearing.

Mr. Cross said in the matter of BOA-06-24, 4 Kings Forest Court, he moved that the Zoning Administrator's findings of fact be incorporated into the record by reference and accepted and based on said findings of fact, he moved that the Zoning Enforcement Officers be upheld and the Special Exception denied. Mr. Kee seconded the motion. The Board voted 4-3 in favor of the motion. (Ayes: Holston, Buffington, Cross, Kee. Nays: Parmele, Pinto, Schiffan.)

APPEAL OF CIVIL PENALTIES

(A) BOA-06-25: 4001 U.S. 220 NORTH - DAVE'S CONSTRUCTION SERVICE, INC. APPEALS THE DECISION MADE BY THE ADVISORY COMMISSION ON TREES AT THEIR MARCH 8, 2006 MEETING REGARDING UPHOLDING A PORTION OF THE CIVIL PENALTIES THAT HAVE BEEN ASSESSED FOR REMOVAL OF TREES LOCATED AT 4001 U.S. 220 NORTH. THIS CASE WAS PREVIOUSLY HEARD AT THE OCTOBER 12, 2005 MEETING BY THE GREENSBORO ADVISORY COMMISSION ON TREES, THEN BY THE BOARD OF ADJUSTMENT AT THE JANUARY 23, 2006 MEETING AND REMANDED BACK TO THE GREENSBORO ADVISORY COMMISSION ON TREES. SECTIONS 30-5-4.10 & 30-5-4.11, PRESENT ZONING-CD-HB AND HB, BS-228, CROSS STREET-HORSE PEN CREEK ROAD. (CONTINUED)

Ken Keller, Esq., 235 North Edgeworth Street, said this was a very important issue to his client. He would certainly move as quickly as he could, but it is significant on the merits and on the issue and he liked the idea of being able to address the full Board, but he would hope that they would get a full hearing also. He did not anticipate that his time was going to be protracted and he had been in three hearings with Ms. Begley in the past and found that she is very concise. So it was his hope that they could do this in 25 minutes. But if we get into question and answer and it appears that further communication is important, he would hope they had that kind of flexibility.

Mr. Ruska said he knew six of the Board members had heard this case before or are familiar with it. Mr. Schiffan has no background on this case whatsoever. He thought that in all fairness to Mr. Schiffan as a Board member, he was not sure that they could do this in 25 minutes and afford Ms. Begley her opportunity to explain what has happened and Mr. Keller to explain his argument. He was just a little leery of that. Chair Holston agreed.

Ms. Buffington moved that BOA-06-25, 4001 US 220 North, be continued until the next scheduled meeting with the condition that it be on the top of the agenda for the next scheduled meeting. Mr. Parmele seconded the motion. The Board voted unanimously 7-0 in favor of the motion. (Ayes: Holston, Buffington, Cross, Kee, Parmele, Pinto, Schiffan. Nays: None.)

Mr. Ruska asked the Board members to keep their copy of the transcripts so they would not have to be reproduced again.

OTHER BUSINESS:

Mr. Ruska said the City Council had appointed Scott Brewington to take Sandra Anderson's place. The letter went out last week, but to his knowledge, Mr. Brewington had not yet accepted and has not had his orientation. Certainly by next month, both those would have occurred and would have been sworn in. We should have another member. Mr. Schiffan has been appointed as an alternate and staff will have to discuss some rules about Mr. Schiffan's role in future hearings.

Mr. Kee said his term was set to expire next month. When he accepted this position, he had in mind he would be here a year and give someone from the neighborhood the opportunity to come and replace him. He thought they were having difficulty finding someone who could meet the schedule.

Mr. Ruska said technically, Mr. Kee's term runs out June 15th so he would be able to serve at the May meeting. Typically the way it has been in the past, if a Board member had not been replaced, they usually have been willing to serve until a replacement is named. In any event, things are looking up as far as the Board is concerned now that we do have at least one alternate. City Council has made provision for a second alternate, although he did not think that person had been named yet. They will have to discuss rules of procedure for Mr. Schiffan.

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There being no further business before the Board, the meeting was adjourned at 5:45 p.m.

Respectfully submitted,

Hugh Holston, Chair
Greensboro Board of Adjustment

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